

REMARKS

Please refer to our new Attorney Docket Number TAM-1005-US and Change of Correspondence Address, 2603 Augusta, Suite 700, Houston, Texas 77057.

Claims 1-20 are pending in the application and stand rejected.

Objections to Drawings

The Examiner has objected to the drawings under 37 CFR § 1.83(a). Specifically, the Examiner contends that the “shoes” of claim 12 must be either shown in the drawings or the feature cancelled from the claim. Applicant traverses the rejection and submits that the shoes recited in claim 12 are depicted in the drawings. Figure 4 clearly shows the engagement shoes 58.

The Examiner also has objected to the drawings under 37 CFR §1.84(p)(4) because the reference character “58” has been used to designate both the U-shaped engagement shoes and a side member in Figure 4. In response, Applicant is presenting herewith a letter to the official draftsman containing a proposed drawing correction for Figures 4, 5 and 6.

Additionally, paragraph [0025] of the specification is being amended herein to correct the error of double use of the reference numeral “58.” Applicant submits that no new matter is being introduced by way of this amendment.

Rejection of Claims 13 and 15 Under 35 U.S.C. §112, Second Paragraph

Claims 13 and 15 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner considers the specification and drawings to fail to support the limitation of a tension cable to prestress the panels.

Applicant does not concede the propriety of the Examiner’s conclusion in this regard. In order to expedite prosecution in this matter, however, and to narrow the issues remaining to be

resolved, Applicant is canceling claim 13 and amending claim 15 herein to remove the language at issue. Applicant submits that the rejection has been rendered moot and should be removed.

Rejection of Claims 15-20 Under 35 U.S.C. §112, Second Paragraph

Claims 15-20 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner considers the use of the term “plastic bending” in claim 15 to be repugnant to the usual meaning of that term. The Examiner has further suggested that the phrase “elastic deformation,” found in Applicant’s disclosure, would be more appropriate in claim 15. Accordingly, Applicant has amended claim 15 herein to use the term “elastic deformation” rather than “plastic bending.” Applicant submits that the amendment adds no new matter and is fully supported by the specification at least at page 5, line 20. Applicant submits that the rejection should now be overcome.

Rejection of Claims 1-14 Under 35 U.S.C. §102(e) over Stephens

Claims 1-14 stand rejected as being anticipated under 35 U.S.C. §102(e) over U.S. Patent No. 6,461,076 issued to Stephens et al.

The Stephens patent issued on October 8, 2002 (six months after the present application was filed). Stephens would be prior art, if at all, under 35 U.S.C. §102(e). According to the face of the Stephens patent, the application for Stephens’ patent was filed on January 3, 2001. In order to remove the rejection, Applicant must show conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to filing of the application. 37 CFR §1.131. In response to the rejection, Applicant is submitting herewith an affidavit under 37 CFR § 1.131 which presents facts showing that the invention of claims 1-14 was conceived prior to the effective date of the Stephens reference and that Applicant

worked diligently to reduce the invention to practice thereafter. Applicant also worked diligently from a time prior to the filing date of the Stephens patent to constructively reduce the invention to practice by filing of a patent application.

Applicant submits that the Stephens reference is not prior art to the claimed invention and, therefore, cannot be used to reject the claims under § 102(e). Applicant respectfully requests that the Examiner remove the rejection.

Rejection of Claims 15-20 under 35 U.S.C. §103(a) over Stephens

Claims 15-18 stand rejected for obviousness over the Stephens reference. Applicant submits again that the Stephens patent is not properly prior art and, therefore, cannot be used as prior art to reject claims 15-20. Applicant submits that the rejection should be withdrawn.

CONCLUSION

In accordance with the recent amendments to 37 CFR §1.121, Applicant is including clean copies of the amended claims within the text of this response. A marked-up version of the amended claims showing the changes made is attached hereto.

The Commissioner is hereby authorized to charge any fees deemed necessary for this response to **Deposit Account No. 13-0010 (TAM-1005-US)**, maintained by Madan, Mossman & Sriram. The Examiner is invited to discuss this matter with Applicant's attorneys should any questions arise.

Respectfully submitted,



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MARKED-UP VERSION OF AMENDMENTS SHOWING CHANGES MADE

In the Claims:

15. (First Amended) A roadway crash cushion comprising:
- a longitudinal, ground-mounted basetrack that comprises a pair of parallel rail members;
 - a pair of planar panel members that are positioned parallel to one another and in a substantially vertical orientation, the panel members each having a cambered portion that promotes [plastic bending]elastic deformation of the panel member along the cambered portion;
 - a plurality of diaphragms for securing the panel members to each other and to the basetrack, the diaphragms each comprising a pair of shoes for sliding engagement of the diaphragm to the basetrack rail members; and
 - a tension cable affixed to at least one diaphragm[to prestress the panel members in a bending relation at their cambered portions].

In the Specification:

[0025] The crushable cells include rectangular frames or diaphragms 40 that join the parallel panel rows 36, 38 together. In the drawings, individual diaphragms are designated consecutively from the upstream end of the cushion 10 as diaphragms 40a, 40b, 40c, etc. The diaphragms 40 are preferably formed of steel box beam members welded to one another. In a currently preferred construction, bolts or rivets 42 (visible in Figure 2) are used to affix the panel rows 36, 38 to the frames 40. Referring now to Figures 4-6, a single exemplary diaphragm, or frame, 40, is shown in greater detail. The diaphragm 40 includes a widened upper portion, generally shown at 50, and a narrower lower portion 52. The lower portion 52 includes a pair of generally vertically oriented support members 54 and a connecting cross-piece 56. U-shaped engagement shoes 58 are secured to one side of each of

the support members 54 and slidably engage the rail members 28, 30. The upper portion 50 includes a pair of vertically disposed side members [56, 58]59 with upper and lower cross-members 60, 62 that interconnect the side members [56, 58]59 to form a rectangular frame. Additional vertical and horizontal cross-members 64, 66, respectively, are secured to one another within the rectangular frame for added support. Plate gussets 68 are welded into each corner of the rectangular upper portion 50 in order to help maintain rigidity and stiffness for the diaphragm 40.